

Programmatic Safe Harbor Agreement for the
Southwestern Willow Flycatcher
in
Washington and Kane Counties, Utah



Color Country Resource Conservation and Development
Council, Inc.
and
U.S. Department of the Interior, Fish and Wildlife Service
July 2008

1. INTRODUCTION

This programmatic Safe Harbor Agreement (Agreement) is entered into between the Color Country Resource Conservation and Development Council, Inc. (Program Administrator) and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereinafter collectively called the "Parties." The purposes of this Agreement are (1) to promote the conservation of the Southwestern willow flycatcher, through the voluntary restoration, enhancement, and management of native riparian habitat in southwestern Utah, (2) to provide certain regulatory assurances to landowners participating in such restoration, enhancement, and management activities, and (3) to accomplish the foregoing without negatively affecting farming and ranching activities. This Agreement follows the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), both of which implement Section 10(a)(1)(A) of the Endangered Species Act (ESA).

2. LIST OF COVERED SPECIES

This agreement covers the following federally listed species, which is hereafter referred to as the "covered species" as defined in the Service's final Safe Harbor Policy (64 FR 32717): Southwestern willow flycatcher ("flycatcher"), (*Empidonax traillii extimus*).

3. PURPOSE AND AUTHORITY

Sections 2, 7, and 10 of the ESA of 1973, as amended, allow the Service to enter into this Agreement. Section 2 of the ESA states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is key to safeguarding the nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the Service to review programs that it administers and to utilize such programs in furtherance of the purposes of the ESA. By entering into this Agreement, the Service is utilizing its endangered species and related programs to further the conservation of the nation's fish and wildlife resources.

Section 10(a)(1) of the ESA authorizes the Service's issuance of enhancement of survival permits for listed species. This Agreement is entered pursuant to the Service's Safe Harbor Agreement final policy (64 FR 32717), final regulations (64 FR 32706), and revisions to the regulations (69 FR 24084), and implements the intent of the Parties to follow the procedural and substantive requirements of Section 10(a)(1)(A) of the ESA. The Permit, for which the Program Administrator has applied, has been applied for in good faith. If granted, it is expected to benefit the Southwestern willow flycatcher by increasing and improving the habitat available to them, creating an opportunity to increase their numbers, and providing assurance against the loss of the species in the area as a result of habitat loss or other factors elsewhere. The Agreement and Permit are consistent with the purposes and policies of the ESA, because they are expected to further the conservation of the covered species in a manner consistent with the recommendations and strategies contained in the recovery plan for this species.

The purpose of this Agreement is for the Parties to collaborate in the voluntary enrollment of private land Program Participants into Cooperative Agreements (Exhibit 1) that define conservation measures for flycatchers on the Program Participant's property. These Cooperative Agreements will enhance and manage the flycatcher and its habitat on private lands throughout its range in Utah.

4. DESCRIPTION OF ENROLLED LANDS

The properties subject to this Agreement consist of those non-Federal lands in Washington and Kane Counties, Utah, that are hereafter made subject to Cooperative Agreements between the owners or managers thereof (Program Participants) and the Program Administrator in the form attached hereto as Exhibit 1. Such properties are referred to herein as the "enrolled properties." The area within which properties may be enrolled is depicted on the attached map and consists generally of those lands within the historic range of the flycatcher in the Utah portions of the Lower and Upper Colorado Recovery Units. The enrolled properties will be mapped more precisely in the individual Cooperative Agreements developed under this umbrella agreement. Current and recent land use practices on the enrolled properties are likely to be varied and can include grazing, crop production, and other agricultural uses, as well as recreational uses. Such Cooperative Agreements shall be effective upon the signing thereof by the Program Participant and the Program Administrator.

5. BASELINE

For each enrolled property, the Program Administrator shall specify the baseline conditions based upon a survey for flycatchers on the enrolled property, conducted by a qualified person satisfactory to the Service and according to Service protocol (see below), not more than 12 months prior to the signing of the Cooperative Agreement. Note that the protocol requires that surveys be conducted during the breeding season (May 1 – August 15). If flycatchers are detected during a baseline survey, the baseline is the amount of available flycatcher habitat (see below) present on the property; if no flycatchers are detected, the baseline is zero.

The protocol used to determine the presence or absence of flycatchers shall be: Sogge, Mark K., R.M. Marshall, S.J. Sferra, and T.J. Tibbitts: A Southwestern Willow Flycatcher Natural History Summary and Survey Protocol. Technical Report NPS/NAU cprs/NRTR-97/12. May 1997. <http://sbsc.wr.usgs.gov/cprs/research/projects/swwf/protocol.asp>.

"Available flycatcher habitat" shall include streams and standing open water areas and all riparian vegetation including seep willows (*Baccharus sp.*), arrowweed (*Pluchia sp.*), saltbush (*Atriplex sp.*), mesquite (*Prosopis sp.*), acacia (*Acacia greggii*), desert willow (*Chilopsis linearis*), tamarisk (*Tamarix spp.*), Russian olive (*Elaeagnus angustifolia*), Salix willows (*Salix sp.*), ash (*Fraxinis sp.*), box elder (*Acer negundo*), and cottonwood (*Populus sp.*). Total acreage of flycatcher habitat shall be determined by mapping the area of open and flowing water (i.e., ponds, streams, marshes, etc.) and all riparian vegetation patches existing on the property prior to the initiation of the project.

In order to receive the assurances regarding take of covered species specified in Section 10 hereof, a Program Participant must maintain on the enrolled property at least as much available flycatcher habitat as was occupied by flycatchers when the Program Participant entered into the program.

6. MANAGEMENT ACTIVITIES

The Program Administrator shall develop for each enrolled property, and append to each Cooperative Agreement, a restoration plan that specifies the habitat restoration, enhancement, and management activities to be carried out on the enrolled property to which it applies and a timetable for implementing those activities. These activities shall include one or more of the following:

- Planting native vegetation associated with flycatcher breeding habitat that is appropriate for the site, such as native trees (i.e., cottonwoods), shrubs (i.e., willows, alders), and herbaceous plants (i.e., grasses and forbs).
- Installing or constructing fencing, livestock watering facilities, and stream crossings to exclude or control use of the riparian area by livestock.
- Implementing prescribed grazing management to adjust grazing periods, or stocking rates to meet the desired objectives of the plant community.
- Controlling or removing nonnative vegetation, such as tamarisk, Russian olive, or herbaceous weeds, provided that its removal is done as part of a restoration effort to replace such nonnative species with native species.
- Restoring or enhancing the physical and biological functions of the stream to provide suitable habitat for aquatic species and to provide morphological characteristics required to sustain riparian plant communities by 1) Restoring channel widths; 2) Improving floodplain to channel connectivity; 3) Installing in-stream structures to control direction, rate, and/or level of water in the floodplain; 4) Removal of dams, dikes, or levees; and other means such as the use of bioengineering techniques.
- Restoring floodplain wetlands to provide desired conditions of slow-moving water, saturated soils, and other conditions enabling the establishment of wetland and riparian plant communities.

Each restoration plan will be designed to provide either (1) sufficient flycatcher habitat on the enrolled property capable of supporting a breeding pair of flycatchers if insufficient habitat for that purpose currently exists there, (2) sufficient flycatcher habitat capable of supporting one or more additional breeding pairs of flycatchers if sufficient habitat to support at least one pair currently exists, or (3) improved quality of flycatcher habitat by removing nonnative vegetation and replacing it with native vegetation.

The Program Administrator will ensure management activities prescribed in the Cooperative Agreement are carried out as described and that all reporting requirements are completed. Emergency situations, such as flood, drought, wildfire, disease, or other unforeseen circumstances may require management actions not specified in the Cooperative Agreement. In these situations, the Parties acknowledge that it may be impossible to provide the 90-day notice required by Section 6 of the Cooperative Agreement prior to initiation of activities that could result in take of the covered species. However, the Program Administrator will immediately notify the Service of such a situation and implement actions as described in Section 10 of the Cooperative Agreement.

7. NET CONSERVATION BENEFIT

The Service has determined that implementation of this Agreement is reasonably expected to provide a "net conservation benefit" to the covered species. The basis for the Service's determination is as follows:

Southwestern willow flycatchers are at a very high risk of extirpation from Utah. Only three breeding sites, occupied by a total of seven breeding territories, are known in the entire State, all of which are found along the Virgin River in Washington County. Small sites with five or fewer breeding territories are at the greatest risk of extirpation. Throughout the flycatcher's range, 265 breeding sites have been tracked since 1993, of which 122 no longer support breeding territories. Of these 122 sites that no longer support breeding flycatchers, 120 (98%) were small sites with 5 or fewer territories, underscoring the vulnerability of the few sites in Utah. The management activities performed by the Program Participants pursuant to this Agreement are expected to increase the likelihood of the flycatcher's persistence in Utah by increasing or improving the quality and quantity of breeding habitat for it during the term of this Agreement.

A recovery plan was completed in 2002, focusing recovery actions on conserving and restoring native riparian habitats in an effort to increase the number of flycatcher populations and decrease the distance between populations. One goal of the Recovery Plan is to increase the number of known flycatcher territories. Habitat conservation and restoration is one method of potentially increasing the number of territories across the landscape. Because this is an umbrella document, we cannot specify the actual acreage of habitat that will be restored or the number of territories we may be able to increase. However, all management activities in this agreement are consistent with Recovery Actions described by the Recovery Plan, and will support long-term conservation efforts.

The Agreement supports recovery through development and implementation of site-specific management plans for the restoration and management of riparian habitat. The specific recovery actions addressed in the Agreement are: 1) to "increase and improve occupied, available, and potential breeding habitat," 2) to increase metapopulation stability, and 3) to "assure implementation of laws, policies, and agreements that benefit the flycatcher," in the Recovery Plan for the flycatcher by developing and implementing site-specific management plans for the restoration and management of riparian habitat.

Critical habitat for the Southwestern willow flycatcher was designated in 2005. The Virgin River in Washington County, Utah, from the State line to the Washington Fields Diversion was included in the critical habitat designation. Eighty-three percent of the riparian habitat along this river reach is privately owned. Conservation and recovery of the Southwestern willow flycatcher along the Virgin River, Utah, will depend on engaging willing private landowners in conservation efforts.

8. OTHER RESPONSIBILITIES OF THE PARTIES

A. The Program Administrator agrees to enter into Cooperative Agreements with Program Participants, in the form attached hereto as Exhibit 1, that specify the management activities to be undertaken on the enrolled land, require the Program Participant to give the Program Administrator advance notice of certain activities likely to reduce the amount of flycatcher habitat on the enrolled property, allow access to the enrolled property by the Program Administrator and the Service or their agents, and address the responsibilities of the Program Participants in the event of the transfer of ownership of the enrolled property or the termination of the Cooperative Agreement, all as set forth in further detail in Exhibit 1. In addition to entering into Cooperative Agreements with willing non-Federal landowners and managers, as described above, the Program Administrator agrees to:

- 1) Annually, the Program Administrator, in cooperation with the Service and the Utah Division of Wildlife Resources, will ensure that surveys are carried out on the restored habitat within enrolled properties to assess the general condition of habitat, use of the habitat by the covered species, progress of the ongoing management activities, and the satisfaction of the Program Participant with the project. If flycatchers are observed in the course of such surveys, that observation will be noted. Such survey activities may be carried out on the Program Administrator's behalf by a qualified entity pursuant to an agreement with the Program Administrator and Program Participant;
- 2) Provide the Service with an annual report, due by December 31 of each year, in the form attached hereto as Exhibit 2; and,
- 3) Furnish the Service with copies of all draft Cooperative Agreements hereunder prior to executing them and refrain from executing any to which the Service has objected in writing within 15 days of receiving the draft Cooperative Agreement.

B. In consideration of the foregoing, the Service agrees to:

- 1) Upon execution of the Agreement, issue to the Program Administrator a permit in accordance with ESA Section 10(a)(1)(A), and valid for a period of 50 years, authorizing take of the covered species as a result of implementing management activities specified in a Cooperative Agreement, or as a result of other lawful

activities on enrolled properties after the management activities specified in such Cooperative Agreement have been initiated, provided that such taking shall be consistent with maintaining baseline conditions on the enrolled property.

- 2) Provide to the Program Administrator and Program participants technical assistance, to the maximum extent practicable, when requested; and provide information on Federal funding programs.

9. AGREEMENT AND PERMIT DURATION

This Agreement becomes effective upon issuance by the Service of the ESA Section 10(a)(1)(A) permit described in Section 7 hereof. The Agreement and permit will be in effect for 50 years. Cooperative Agreements developed pursuant to this Agreement will be for a term of at least 15 years. Certificates of Inclusion issued under this permit will have a term of 10 years beyond the term of the Cooperative Agreement but in no event beyond 2058. This Agreement and the permit described in Section 7 hereof may each be extended by mutual written consent of the parties, in compliance with all applicable laws and regulations.

10. ASSURANCES REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining the baseline conditions identified in Section 5 hereof, the ESA Section 10(a)(1)(A) permit referenced in Section 8 shall authorize the taking of the covered species and its habitat incidental to otherwise lawful activities by Program participants and their employees or agents, in the following circumstances:

- 1) Implementing the management activities identified in Section 6 hereof; and
- 2) Making any lawful use of the enrolled property of the Program participant after the management activities identified in Section 6 have been initiated, including but not limited to farming, ranching, or other agricultural use, use of registered pesticides and herbicides (provided that such use is in accordance with label restrictions), recreation, use and maintenance of access paths and of roadways, and irrigation ditch repair and maintenance.

11. MODIFICATIONS

- A. Modification of the Agreement. Either party may propose amendments to this Agreement by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will respond in writing to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.
- B. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), a Program participant may terminate his Cooperative Agreement

with the Program Administrator for circumstances beyond his or her control by giving written notice to the Program Administrator. In such circumstances, the Program participant may, pursuant to the permit referenced in Section 8.B.1 hereof, return the enrolled property to baseline conditions even if the management activities identified in Section 6 have not been fully implemented.

- C. Permit Suspension or Revocation. The Service may suspend or revoke the permit referenced in Section 8.B.1 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Program Administrator or any Program participant has the right to appeal any suspension or revocation. In the event of a permit suspension or revocation, the Service will, if requested by a Program participant, convert any previously approved Cooperative Agreement into an individual agreement between the Program participant and the Service, as provided in paragraph E below.
- D. Baseline Adjustment. The baseline conditions for any enrolled property may, by mutual agreement of the Parties and the Program participant, be adjusted if, during the term of the Cooperative Agreement and for reasons beyond the control of the Program participant or as an unintended result of properly-implemented management activities, the amount of available flycatcher habitat is reduced from what it was at the time the Cooperative Agreement was negotiated.
- E. Inability of the Program Administrator to Continue. If the Program Administrator shall, for any reason, cease to be able to perform its obligations under this Agreement, it shall give written notice of that fact to the Service at least 60 days prior to ceasing to perform its obligations under the Agreement. Upon receiving such notice, the Service may, at its discretion after consultation with Program Participants, either amend this Agreement and the associated permit to substitute a new Program Administrator, or, if a Program Participant prefers, convert any previously approved Cooperative Agreement into an individual agreement between the Program Participant and the Service under the same substantive terms, in compliance with all applicable laws.

12. OTHER MEASURES

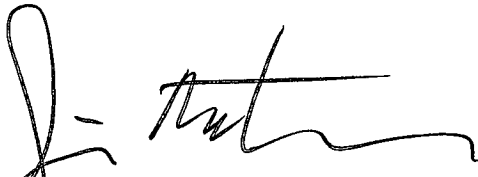
- A. Remedies. No party shall be liable in monetary damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.
- B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.
- C. Succession and Transfer. As provided in Part 11 of the Service's Safe Harbor Agreement Policy, if a Program Participant transfers his or her interest in the enrolled property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the enrolled property as the original Program Participant, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Program Participant.

- D. Availability of Funds.** Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.
- E. No Third-Party Beneficiaries.** This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.
- F. Other Listed Species, Candidate Species, and Species of Concern.** Although the Service regards it as unlikely, the possibility exists that other listed, or candidate species, or species of concern may occur in the future on enrolled properties as a result of the management actions specified in Attachment 1. In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, the Program Administrator and the Service will work together either to amend this Agreement and the Permit described in Section 8 hereof to cover such other species or otherwise to confer upon Program Participants similar assurances with respect to such other species as are described above for covered species.
- G. Notices and Reports.** Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Vicki Tyler, Coordinator
Color Country Resource Conservation and Development Council, Inc.
2390 W. Highway 56, Suite #14
Cedar City, Utah 84720

Larry Crist, Utah Field Supervisor
U.S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
West Valley City, Utah 84119

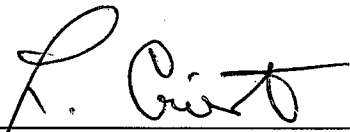
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Section 7.B.1 above.



Jim Matson, Chairman
Color Country Resource Conservation and Development Council, Inc.

7-27-08

Date



Larry Crist, Utah Field Supervisor
U.S. Fish and Wildlife Service

7/15/08

Date

EXHIBIT 1
Cooperative Agreement

This voluntary agreement recognizes the unique and important role that private landowners in Utah can play in helping wildlife valued by the people of the State and of the nation. The purpose of the agreement is to enable land management activities beneficial to rare species to be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner or manager thereof to use it as he or she wishes. The Program Administrator and Program Participants must also comply with any applicable local, State, and Federal laws in carrying out specific measures included under this Cooperative Agreement. The terms of this agreement are as follows:

1. The Color Country Resource Conservation and Development Council, Inc. ("Program Administrator") and _____ (Program Participant) have entered into this Agreement to improve and manage native riparian habitat for the betterment of the Southwestern willow flycatcher, on certain lands owned or managed by the Program Participant that are delineated on the attached map (Exhibit A), and referred to herein as the "enrolled property." The enrolled property may comprise all or part of a parcel or parcels.
2. The U.S. Fish and Wildlife Service (Service) has issued to the Program Administrator an endangered species permit that authorizes, until the year [2057], the incidental taking of Southwestern willow flycatchers ("flycatchers") and their habitat by the Program Participant and other persons who enter into cooperative agreements with the Program Administrator pursuant to the permit.
3. The Program Participant agrees to conduct, or allow to be conducted, activities to restore, enhance, or manage native riparian habitat in accordance with the plan set forth in the attached Exhibit B, and maintain such habitat for a minimum period of 15 years from the date of this Agreement.
4. The Program Participant, or his agent, further agrees to provide the Program Administrator with a brief report, due December 31 of the year following the signing of this Cooperative Agreement, and annually thereafter. Such report, in the format shown in Exhibit 3 or in any other simple format to be developed by the Program Administrator, shall identify any management activities undertaken to restore, enhance, or manage native riparian habitat on the property subject to this Cooperative Agreement, as well as any changes in the extent of such habitat in the preceding year. The Program Participant understands and agrees that the Program Administrator will include these annual reports with the reports that it is required to submit to the Service from time to time.
5. In consideration of the foregoing, the Program Administrator has issued to the Program Participant the attached Certificate of Inclusion under the Program Administrator's permit. This Certificate authorizes the Program Participant and the Program Participant's successors or assigns:

- a) To take the species or its habitat identified above incidental to implementing the management activities set forth in this Agreement;
- b) After initiation of, and consistent with such management activities, to carry out any other lawful activity that may cause the incidental taking of such species on the Program Participant's property, provided that such taking does not reduce the amount of available Flycatcher habitat below the amount specified in Part 7 below.

As used in this Cooperative Agreement, "incidental" take refers to the unintentional or unavoidable killing or injuring of the species identified above in the course of carrying out otherwise lawful activities. Nothing in this Cooperative Agreement authorizes the Program Participant to capture, collect, or deliberately kill or injure any such species.

6. After the agreed-upon management activities have been initiated, the Program Participant agrees to give the Program Administrator at least 90 days notice (except when precluded by emergency situations) prior to commencing any activity likely to reduce the amount of available flycatcher habitat on the enrolled property, and the Program Participant further agrees to carry out such activity outside the normal nesting season of the flycatcher (i.e., before May 1 or after August 15 in any calendar year).

7. The Program Participant and the Program Administrator agree that according to surveys conducted by the Service or another party acceptable to the Service, at the time that this Cooperative Agreement was signed, flycatchers were [present or absent] and [X] acres of available flycatcher habitat were present on the enrolled property located at the general locations indicated on Exhibit A. [Because flycatchers were absent, baseline conditions applicable to the property are zero]. OR, that number of acres of available flycatcher habitat represents the "baseline conditions" applicable to the property. So long as that baseline amount of available flycatcher habitat remains on the property, the Program Participant may incidentally take the species as provided in Part 5 above. If requested by the Service within 90 days of its receiving a copy of the Cooperative Agreement, the Program Participant agrees to allow the Service (or Utah Division of Wildlife Resources) access to the enrolled property for the sole purpose of establishing a baseline determination set forth in this paragraph.

8. Successors and assigns may incur the responsibilities and benefits of this Agreement by becoming a party thereto, unless terminated in writing as specified below. If the Program Participant decides to sell or otherwise transfer ownership or management of the property, the Program Participant agrees to give the Program Administrator notice of such decision prior to the intended sale or transfer and to give the purchaser or transferee notice of this Cooperative Agreement so that the purchaser or transferee can become a party to it if he or she so wishes. The Program Participant will inform the Program Administrator in the event all, or part of, the Program Participant's property delineated on the map labeled Exhibit A is transferred to another owner.

9. The Program Participant shall grant the Program Administrator and the Service or their agents access to the Program Participant's property as necessary to confirm that the restoration, enhancement, or management activities set forth in Exhibit B have been conducted, and to assess the condition of the habitats being managed under the Cooperative Agreement. The Program

Administrator shall give the Program Participant reasonable notice of these visits and shall be accompanied by the Program Participant or an agent of the Program Participant if the Program Participant so desires.

10. The Program Participant, or the Program Participant's successors or assigns, may terminate the Cooperative Agreement for reasons beyond their control at any time by giving written notification to the Program Administrator, in which case the Program Participant or the Program Participant's successors or assigns' right to incidentally take the species under the permit and shall expire 60 days after giving such notice. This Cooperative Agreement can be renewed, extended, or modified at any time subject to both the Program participant's and the Program Administrator's approval. The baseline conditions in any renewal or extension of this Cooperative Agreement shall be the same as set forth in Part 7 above.

Emergency situations, such as flood, drought, wildfire, disease, or other changed circumstances may require management actions not specified in the Conservation Agreement. In these situations, the Parties acknowledge that it may be impossible to provide the 90-day notice required by this Agreement (Section 6) prior to initiation of activities that could result in take of the covered species. However, the Program Participant will notify the Program Administrator immediately of discovering such a situation, and will make reasonable accommodations to the Program Administrator and the Service for salvaging populations of the covered species. In the event that changed circumstances destroy the restored habitat the Program Participant with the assistance of Program Administrator may replant or take other corrective action to restore the destroyed habitat.

11. The Program Participant and the Program Administrator agree with respect to liability and indemnification for injuries to persons or property arising out of this Agreement as follows: [details may vary from agreement to agreement] the Program Participant assumes no liability for injury to any employee or representative of the Program Administrator or the Service in the course of any visit to the property under this agreement. Neither the Program Administrator nor the Service shall be liable for any damage to the property of the Program Participant or Landowner arising from any visit to the property pursuant to this agreement.

12. So long as the permit and Certificate of Inclusion remain in effect, and provided the management activities required by this Agreement have been carried out, the Program Participant may exercise the right conferred by the Program Administrator's permit and the Certificate of Inclusion to incidentally take the species identified above on the enrolled property.

Color Country Resource Conservation and Development Council, Inc.

_____, Program Participant

By _____

By _____

Date _____

Date _____

Exhibit A

[map of the property subject to the cooperative agreement]

Exhibit B

[specifications for management actions to be carried out]

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF PROGRAM PARTICIPANT], is included within the scope of Permit No. _____ issued by the U.S. Fish and Wildlife Service on [DATE] for a period of 50 years to the Color Country Resource Conservation and Development Council under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such permit authorizes certain activities by participating landowners as part of a safe harbor program to restore and enhance habitat for the Southwestern willow flycatcher. Pursuant to that permit and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of such species, subject only to the terms and conditions of such permit and the cooperative agreement entered into pursuant thereto by the Color Country Resource Conservation and Development Council, Inc. and [NAME OF PROGRAM PARTICIPANT] on [DATE].

Name and Title of Representative of the
Color Country Resource Conservation and Development Council, Inc.

Date: _____

EXHIBIT 2
Annual Report for
Safe Harbor Agreement between the U.S. Fish and Wildlife Service
and Color Country Resource Conservation and Development Council, Inc.

Permittee's Name: Color Country Resource Conservation and Development Council, Inc.

Permit Tracking Number: TE-XXXXXX-0

Location: The properties subject to this Agreement consist of those non-Federal lands in, Washington and Kane Counties, Utah.

Agreement Approved by: Utah Field Office, U.S. Fish and Wildlife Service.

Covered Species: Southwestern willow flycatcher.

Report on the Monitoring Program (1-2 paragraphs): Describe in general terms the results of any surveys carried out pursuant to Section 7.A.2 of the Safe Harbor Agreement in the year covered by the report; append a copy of the report. Describe any major changes in the collective condition of Flycatcher habitat included in the baseline or improved as part of the Program participants' conservation plans. Describe any evidence of utilization of such habitat by the covered species. Append to this report copies of all reports submitted to the Program Administrator by Program Participants since the last annual report.

Date Annual Report is Due: On or before December 31, for the prior calendar year

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer: _____

Report on Area-wide Management and Conservation Actions (1-2 paragraphs): As necessary to supplement the monitoring reports above, summarize the extent and condition of Flycatcher habitat on the collective enrolled properties. Describe any relevant regional conditions (e.g., drought, flood) that may be required to interpret the management activities described in the appended annual reports from the Program Participants. Finally, please convey any suggestions for adaptive management of project areas that may have emerged from the program so far.

EXHIBIT 3
Annual Report from Program Participant to Program Administrator

Directions: Walk through the conservation area observing overall conditions and paying particular attention to the areas where practices have been applied. You may wish to have your baseline maps and conservation plan handy for reference. Explanations can be brief (one or two sentences).

At the discretion of the Program Administrator, you may substitute for this form a monitoring report provided to you by a biologist or conservation professional familiar with the Southwestern willow flycatcher.

Condition of Southwestern Willow Flycatcher Habitat

1. Please circle the types of management activities that you will be implementing as part of this Agreement.
 - Planting of native trees or shrubs
 - Fencing or other measures to prevent or control livestock access to riparian areas
 - Prescribed grazing to adjust livestock grazing periods and stocking rates
 - Control of nonnative species as part of a restoration program
 - Restoring or enhancing the physical and biological functions of the stream
 - Restoring floodplain wetlands
2. List which of these activities have been implemented this year and note whether they differed significantly from the activities described in Exhibit B of your Cooperative Agreement. If the activities were significantly different, explain why.
3. For each activity listed in No. 2, indicate which month it was completed, and indicate what work remains to be completed.
4. What is the general condition of the restored habitat (i.e., do Southwestern willow flycatchers nest at the site, height of vegetation, condition of seeded plants, etc.)? Please comment separately on each management activity implemented.
5. Has the extent of the area of available habitat for the Southwestern willow flycatchers changed within the past year? For example, has the area expanded naturally or has it markedly decreased due to fire, flood, drought, or other natural events?
 - Expanded ____
 - Decreased ____
 - Stayed the same ____Please explain briefly the extent and causes of any noticeable increase or decrease.
6. Have you noticed any change in the types or numbers of birds, or other wildlife in the restored area? If so, please describe these briefly.
7. Has the Program met your expectations? Please explain.
8. Would you recommend the program to others?